FARAD CONTINUATION SHEET NO.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
NAGPUR BENCH, NAGPUR

First Appeal No.279/2006
(The Tata Iron & Steel Co. Ltd. Vs. E.S.I.C. & anr.)

Appeal	District :
Application No.	of 200
Writ petition	

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders.	Court's or Judge's orders

Mr. S.Z. Sonbhadre, Adv. for the appellant.
Mr. M.P.M. Pillai, Adv. for R-1.

CORAM : Smt. Vasanti A. Naik, J.
DATED : 29th August, 2007.

Heard the learned counsel for the parties.

The appellant is a company incorporated under the provisions of the Companies Act, 1956. The respondent-Corporation issued orders dated 23/6/1978 and 7/3/1988 under the provisions of Section 45-A of the E.S.I. Act, asking the appellant to pay an amount of Rs.14,490/- and Rs. 23,929/- respectively towards contribution for the period commencing from 1/4/1978 to 31/1/1988. It is not in dispute that the appellant did not pay the contribution as demanded by the aforesaid orders. Again an order was passed by the respondent-Corporation on 9/9/1988 after duly issuing a show cause notice, directing the appellant to pay an amount of Rs. 12,760/- for the period commencing from ½/1988 to 30/6/1988, plus interest of Rs. 213.15. According to the appellant, the order dated

9/9/1988 was unsustainable and, therefore, the appellant challenged the same in the Employees Insurance Court under Section 75 of the Employees State Insurance Act. The Employees Insurance Court, however, by the order dated 17/9/2004, rejected the application filed by the appellant. The order dated 17/9/2004 is challenged in the instant appeal.

The only submission made on behalf of the appellant is that the appellant-Company had been giving better treatment and facilities to its employees and the employees of the appellant-Company were also not desirous of seeking the benefits from the respondent-Corporation. It was further submitted on behalf of the appellant that since the respondent-Corporation had not extended any benefits to the employees of the appellant-Company, the order dated 9/9/1988 was bad in law.

It was, on the other hand, submitted on behalf of the respondent-Corporation that the appellant had applied for grant of exemption to the company from the provisions of the E.S.I. Act, but the exemption was not granted. It was further submitted on behalf of the respondent that the exemption was refused as the benefits provided by the Corporation to the employees were better than the benefits extended by the appellant-Company. In any case, according to the counsel for the

respondent, this was not a question which could be dealt with by the Employees Insurance Court. It was lastly submitted on behalf of the respondent that the liability of the appellant to pay the contribution does exist also in cases where the Company is covered under the Act though no benefits are extended by the Corporation to the employees. It was also submitted on behalf of the respondent that it is a settled position of law that even if some of the employees do not avail benefits under the Employees State Insurance Act, the contribution paid by the employer is remitted to the general fund and hence it cannot be said that the employer would not be liable to pay the contribution in case where the facilities are not actually availed by the employees.

It is not in dispute that in spite of the order dated 9/9/1988, the appellant had not paid the amount of Rs. 12,760/- plus interest as demanded by the respondent-Corporation. The appellant was, therefore, liable to pay the interest on the amount due and payable by the appellant-Company in view of the provisions of Section 39 (5) of the Employees State Insurance Act, 1948. The appellant has not raised any ground in this first appeal which would give rise to any substantial question of law.

Since no substantial question of law arises for consideration in this first appeal, the same is

dismissed with no order as to costs.

JUDGE

RMP